Joan Marsh
Vice President –
Federal Regulatory

AT&T Services, Inc.
1120 20th Street, N.W.
Suite 1000
Washington, D.C. 20036

202.457.3120 Phone
832.213.0172 Fax
joanmariemarsh@att.com

December 9, 2011

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Applications of AT&T Mobility Spectrum LLC and Qualcomm Incorporated for Consent to the Assignment of Licenses*, WT Docket No. 11-18
NOTICE OF EX PARTE PRESENTATION

Dear Ms. Dortch,

On Wednesday, December 7, 2011, Robert Quinn, Michael Goggin and Joan Marsh, representing AT&T, met with Louis Peraertz, Legal Advisor to Commissioner Clyburn. We summarize our discussions with Mr. Peraertz below. In addition, per Mr. Peraertz's request, we have provided comments on the costs and delays that would be imposed by a 700 MHz band interoperability condition on the above-referenced transaction.

We expressed AT&T's continued commitment to and support of the draft item on circulation recommending approval of the transaction. We noted, however, that AT&T objects to the reduction to the spectrum screen outlined in footnote 137 in the Staff Analysis and Findings recently released in Docket No. 11-65 that is apparently included in the draft Order on circulation.[1] We argued that there was no record for making that reduction in this proceeding and that it is the first time in Commission history that there is a proposed downward adjustment to the screen.

We indicated that we were particularly concerned about this downward adjustment to the screen because the draft order apparently does not make any upward adjustments, notwithstanding that the Commission has expressly recognized that there are significant amounts of spectrum that are being used or could be used for the provision of mobile voice and broadband services but which are not today included in the screen.[2] Reducing the screen, while ignoring long overdue increases that have been recognized to

[1] *In re Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, Staff Analysis and Findings, at 23 n.137, WT Docket No. 11-65 (rel. Nov. 29, 2011).
[2] Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, *Fifteenth Report*, 26 FCC Rcd 9664 (2011) at ¶ 276 at Table 26.

be warranted, is not reasonable and raises questions about process. Therefore, if the Commission is to adjust the spectrum screen in this proceeding, it should include, not just reductions, but increases. To that end, the Commission should include all 194 MHz of BRS/EBS spectrum, not just the 55.5 MHz it currently considers, as the transition to the revised band plan is essentially complete and the Commission has acknowledged that this spectrum is already being used to provide mobile broadband service.[3] In addition, the Commission should include the PCS G block in which Sprint has announced it will launch LTE service in 2012, as well as MSS spectrum.

Going forward, and in light of our concerns about process and the central role the spectrum screen now plays in the Commission's competitive analysis of transactions, the Commission should make adjustments to its screen in an open rulemaking, conducted and concluded annually, allowing party participants to file comments on what is appropriate for inclusion in the screen, and subjecting the Commission's decisions on the screen to judicial review. The Commission should complete the first such proceeding expeditiously.

Responding to questions, we explained that AT&T plans to deploy the Qualcomm Spectrum as supplemental downlink, using carrier aggregation technology which will be enabled after the LTE Advanced standards are released. Supplemental downlink technology will allow AT&T to add downlink capacity to its LTE network by combining Qualcomm's unpaired 700 MHz spectrum with AT&T's paired spectrum to improve the downlink experience for its LTE customers. Supplemental downlink technology permits the bonding of non-contiguous spectrum, including unpaired spectrum, into a single wider channel.

To deploy this technology, chipsets and new handsets will have to be developed to support this new technology. New handsets also will need to be developed incorporating those chipsets. AT&T expects customers to be able to utilize handsets and other equipment incorporating the spectrum as early as late 2014.

We were asked if we could support this spectrum on existing base stations with a software upgrade. To support this spectrum, we will have to accomplish a site-specific hardware upgrade (including new transmitters and also possibly new antennas), complete with structural engineering studies. Finally, we will face costs for unique chipset and device development since we will be the first carrier in the United States to deploy this technology and the only carrier using this new spectrum for LTE. Our best estimate is that our cost to deploy this technology to provide our customers with higher quality LTE services will be between $1 and $2 billion dollars in network costs, which does not include development or device costs.

Finally, we addressed competitors' and 700 MHz A-block license holders' latest attempts to override the 4G standards-setting process and mandate new banding

[3] Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, *Fifteenth Report*, 26 FCC Rcd 9664 (2011) at ¶ 273.

requirements for AT&T. We explained, as an initial matter, that because we are not purchasing 700 MHz A block licenses in this transaction, such a demand is not specific to this merger and inappropriate. We also explained that interoperability is achievable through the use of multi-mode, multi-band chipsets, like those currently being developed by Qualcomm, that will support many frequency bands to accommodate unique carrier needs.

We also explained that this proposal would significantly delay and increase the cost of our LTE deployment and also degrade service quality. Years ago, the independent 3rd Generation Partnership Project ("3GPP") standards-setting process, relying on the advice of numerous technical engineers and other industry experts, developed a band plan for 700 MHz block spectrum that was thoroughly vetted and offers multiple options for dealing with the unique interference and other challenges faced by carriers seeking to develop 4G service in the 700 MHz blocks. AT&T has relied on the standards set by that body in the design of appropriate Band 17 chipsets and devices and to design and deploy its LTE network. To date, we have deployed 4G LTE in 15 markets nationwide and will meet our commitment to cover 70 million POPs by the end of the year.

If AT&T were required to abandon its current reliance on Band 17 and redesign the LTE network deployment around a Band 12 LTE deployment, there would be substantial disruption and delay to our current LTE deployment plans and significant additional costs. AT&T would be required to work with our vendors to develop and obtain new chipsets, devices and radio equipment, a process that usually takes years to complete. We would also have to complete an upgrade at each of our LTE base stations. Finally we anticipate that the addition of a Band 12 chipset to our devices would make the devices substantially larger, likely shorten battery life, and potentially require other tradeoffs such as the elimination of a band used for international roaming. All of this effort would increase costs without providing any benefit for our customers.

We anticipate that the greatest expense, however, would be associated with attempting to manage and mitigate the interference to our network from the Channel 51 broadcasters, particularly in urban areas, and any high power Lower E block broadcasts. As we have demonstrated in detail in the pending rule making on this issue, the interference challenges into the A block are significant and Vulcan Wireless' last minute flawed study does not change that.

To reduce these issues, the Commission would need to modify its rules to address interference challenges caused by Channel 51 and the remaining Lower E block. First, the Commission would need to prohibit extremely high power broadcasts by DTV stations on Channel 51 in order to eliminate interference of such broadcasts into A block base stations and Band 12 device interference into television receivers operating on Channel 51. Second, to eliminate interference resulting from high power transmissions on the Lower E block, the Commission would need to adopt service rules -- similar to those for the Lower A and B blocks -- that impose lower power and antenna height

requirements, and govern co-location, interference coordination, and downlink-only operations.

Absent Commission action to address the Channel 51 and remaining Lower E block interference challenges, we would anticipate ongoing significant expense associated with trying to mitigate holes in our network that would be caused by interference challenges. Those expenses could easily total billions of dollars. On the other hand, if such rule modifications were enacted, and the A Block were largely relieved of the interference concerns that prompted the creation of Band 17, AT&T would not rule out a migration to Band 12 in the future. AT&T should remain free, however, to plan and manage any such migration in a way that would not disrupt existing service or result in unnecessary cost or delay.

Thus, the imposition of an interoperability condition on this transaction would result in enormous costs to AT&T and create tremendous interference problems for the wireless industry in general. The condition also would not address interference concerns caused by high power use of the remaining Lower E Block and Channel 51. In addition, since the interoperability issue is absolutely unrelated to this transaction and raises an issue of industry wide concern, it is inappropriate for the Commission to address the issue in this assignment proceeding. The Commission has a longstanding policy of "not consider[ing] arguments in [merger] proceeding[s] that are better addressed in other Commission proceedings."[4] These issues should be addressed in the Commission's pending interoperability proceeding.

Because of these issues, in our meeting with Mr. Peraertz, we explained that imposition of an interoperability commitment like that proposed by Vulcan Wireless and other A block licensees would be a materially adverse regulatory condition on this transaction that would result in an AT&T decision to abandon the transaction.

In accordance with Commission rules, this letter is being filed electronically with your office for inclusion in the public record.

Sincerely,

Joan Marsh

[4] See, e.g. *In re Applications of AT&T Inc. & Centennial Commc'ns Corp. for Consent to Transfer Control of Licenses*, Authorizations, & Spectrum Leasing Arrangements, Memorandum Opinion and Order, 24 FCC Rcd. 13,915, 13,969, ¶ 133 (stating that general concerns regarding roaming would be more appropriately addressed in the relevant proceeding).

cc: Louis Peraertz, Esq.
Best Copy and Printing, Inc.
Kathy Harris, Esq.
Ms. Kate Matraves
Jim Bird, Esq.